IN THE HIGH COURT OF JUDICATURE OF BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

SUIT NO.2798 OF 1989

Samir Malharrao Satghare. ..Plaintiff.

V/s.

Surena Purshottam Satghare & Ors. ..Defendants.

Mr.S.D.Karwande for Plaintiff.

Mr.Hetal N. Thakore a/w Ms.Jyoti Ghag i/b. Thakore Jariwala & Assoc. for defendant No.11 to 13.

Mr.Hitesh C. Dabhi for Defendant Nos. 6 to 9.

CORAM: A.M.KHANWILKAR,J

DATE : AUGUST 24, 2007.

P.C. :

1. This is a suit for partition of Hindu Joint Family property, more particularly described in Exh.A to the Plaint. The same consists of family house situated on City Survey No.A/306, A/307 and A/308 at Bandra (West),49 Bazar Road, Bandra, Mumbai 400 050, being house, open space and temple(Lord Rama Temple); and other property is Dipmal at Mumbadevi adjacent to Mumbadevi Temple, Mumbadevi, Mumbai 400002.

2. Family Tree produced at Exh."B" alongwith the plaint is not in dispute. The same reads thus:

FAMILY PREDIGREE

CHINTOBA

(One Son)

Ramnath

(Four sons)

(1)	(2)	(3)	(4)
Malharrao	Chintaman	Suryakant	Lahukumar
(Sons)	(Sons)	No issue	(Widow)
(1) Purshottam	(1)Parmanand	(widow also	Smt.Sayunkto
(2) Dhananjay	(2)Kedarnath	expired-	(sons)
(3) Samir	(3)Umeshchandra	so Wills.)	(1)Kamlakar
(daughters)	(daughters)		(2)Satish
(4)Mrs.Rekha M.Powdwal	(4)Kumari Sindha		(3)Dilip
(5)Mrs.Seema D.Madan			(daughters)
(6)Mrs.Kavita L.Chonkar.			(4)Sarojini S. Chonkar
			(5)Mrs.Pramodini
			(6)Mrs.Vijaya Deorukhkar.

3. In substance, the Plaintiff claims that there is no sufficient income out of the property to maintain the same and on account of differences between the family members, there is no option, but to go for partition in respect of the joint family property. It is stated that the temple located in the suit property (Lord Rama Mandir) is family temple solely maintained by Satghare family. In the Plaint, the Plaintiff has referred to several aspects, such as property being exposed to attachment and prospective action by the Corporation for non-payment of taxes. The Plaintiff has also referred to the Court proceedings between the parties in relation to the suit property, including the appointment of Court Receiver in respect of the Family property in 1974. Broadly on that basis, the Plaintiff has instituted the above Suit on 5th February, 1987. The Suit was originally filed before the Bombay City Civil Court, however, has been presented before this Court having regard to the reliefs claimed in the present Suit. The Plaintiff has claimed following reliefs:

> (a) that the Court be pleased to ascertain and declare that the properties situated at 49, Bazar Rd., Bandra, Bombay-50

and more particularly described in exh."A-1" to the Plaint belong to the joint and undivided Hindu family of the Plaintiff and the Defendants abovenamed;

(b) that the Court be pleased to ascertain and declare the individual shares of the respective members of the joint Hindu Family, in the said Joint properties;

(c) that the court be pleased to order and decree on suitable partition and division by metes and bounds of all the immoveable as well as moveable properties viz. Ram Mandir ornaments, articles etc. of the said Joint Hindu Family accordance with an in proportion to the ascertained shares of the respective members thereof and direct delivery of separate possession of his/her individual share therein to each member including the Plaintiff;

(d) for sale of such properties or part thereof as may be necessary for the purpose of equitable partition and division;

(e) the defendants No.6 to 16 be decreed and ordered to pay the share of expenses in the management of family Ram Mandir from April, 1974 to December, 1986 to the Court Receiver, High Court, Bombay, appointed as receiver in S.C.Suit No.4104/81 on the file of this Hon’ble Court.

(f) the Court Receiver, High Court Bombay as already been appointed in the original suit being S.C.Suit No.4104/1981 in this Hon’ble Court as per the Court’s order be continued as the Court Receiver in the above suit for the management of the said Joint Family property with all powers under order XXXI of C.P.C.;

(g) that the Court Receiver, High Court, Bombay, may please be directed to pay out of Rs.876.30 ps. collected from the Offering Box before Ram Deity as per the orders of the then Honourable Addl. Chief Judge Shri Kirtikar towards future expenses of the said Ram Mandir Temple and also contribute out of the property earnings by collecting of Rent

for the Management of the temple if required, as and when he collects such amount from the temple with powers under order XXXI of C.P.C.;

(h) that the Plaintiff and all the defendants abovenamed be directed to pay to the Court Receiver, High Court, Bombay their personal share or contribution towards the payment of Bombay Municipal Taxes, if the Court Receiver, requires and so direct the defendants including the Plaintiff abovenamed;

(i) ad-interim reliefs as per prayers (f), (g) and (h);

(j) the costs of the suit be provided for;

(k) any other reliefs as this Honourable court may deem fit and proper in the circumstances of the case."

4. The Defendant Nos.6 to 9 essentially have resisted the present suit by filing Written Statement. It is stated that the Suit was not maintainable, as portion of the property comprises of temple property, which is not capable of being partitioned. It is also stated that the Suit is not maintainable in view of the Will dated 28th February, 1856 of Late Purshottam Malharshett and the probate obtained on 31st October, 1856 from this Court in that behalf. It is then stated that the Suit is not maintainable also in view of the Probate Petition No.533 of 1986 and Probate Petition No.608 of 1986 in respect of the last Will of late S.R.Satghare and

late Smt. Vatsala Satghare pending in this Court. It is then stated that the Suit is not maintainable and cannot proceed in view of principles of resjudicata and principles analogous to resjudicata, having regard to the Suit being BCCC Suit No.1680 of 1987 and BCCC Suit No.4104 of 1981 pending in the City Civil Court. The said Defendants have also asserted that the Plaintiff has deliberately suppressed to mention the Will dated 28th February, 1856 of late Purshottam Malharshett. The Written Statement then proceeds to give parawise reply to the assertions made in the plaint. On the basis of pleadings filed, my predecessor vide order dated September 8, 2005, framed following issues.

(1) Do the Plaintiff prove that suit property specifically mentioned in Exhibit "A" to the Plaint are the ancestral property of the Plaintiff and the Defendants?

(2) Do the Plaintiff prove that the Plaintiff has share in the suit property? If yes, what are the share of the Plaintiff and all the defendants?

(3) Do the Plaintiff prove that, the Plaintiff is entitled for meets and bound partition, in respect of property more specifically stated in Exhibit "A" to the Plaint and the Articles of Ram Mandir if partition by meets and bound not possible then otherwise the properties of Joint Hindu Family require for sale?

(4) The defendants No.6 to 16 prove that

they don't have to pay their contribution towards expenses in the management of the joint family property more specially stated in Exhibit "A" to the Plaint and Satghare Ram Mandir situated at 49 Bazar Road, Bandra (W), Mumbai 400 050 from April 1947?

(5) What is the share of expenses of defendants No.6 to 16 in respect of Joint Family property, more specifically stated at Exhibit "A" to the Plaint and Satghare Ram Mandir situated at 49, Bazar Road, Mumbai 400 050 from April 1974 to as on today ?

(6) What's order?

5. Indeed, the Defendants did not appear before the Court, when the above issues were framed. However, later on made no efforts for framing of additional issues though they had raised several other pleas in the Written Statement, including the issue of maintainability of suit. Instead the parties proceeded with the trial and recording of evidence. The parties filed affidavit in lieu of examination in chief and cross examination of the respective witnesses was proceeded before the Court Commissioner. The Court Commissioner has submitted his report alongwith evidence recorded by him and other documents. The Plaintiff as well as Defendant No.8 have reiterated the case made out by them in their respective pleadings already filed. I shall refer to the relevant part thereof at the appropriate place. Accordingly, this matter proceeded for

hearing as evidence of both sides was closed.

6. The matter appeared on 9th August, 2007 when the Defendant No.8 pointed out that the documents at pages 69 to 228 of the compilation, titled as evidence, the issue of admissibility thereof will have to be considered. After hearing the parties I proceeded to hold that the documents at page 69 to 228 of the compilation, i.e. the original copies of those documents were not produced by the Defendant No.8. Inspite of that, the Defendant No.8 was relying on zerox copy thereof. I have held that if the Defendants wanted to rely on the said documents ought to have produced original copies, which is the primary evidence. Besides, there was no formal application moved before me on grounds as may be available for treating the said documents as secondary evidence. In the circumstances, it was held that the said documents cannot be looked into being inadmissible. Thereafter, oral argument on merits of the case were advanced by both the sides.

7. Argument essentially proceeded only on two aspects. First contention was that the Defendant Nos. 14 to 16 were married daughters who were married prior to 1994. The said married daughters

cannot be given share in the joint family property. It would have been a different matter if they were married after coming into effect of section 29A of the Maharashtra Amendment Act. The second contention raised on behalf of the Defendant Nos. 11 to 13 was that the family was governed by the principle of Mitakshara Law, whereunder the property devolves by survivorship and not on the basis of inheritance. It was argued that the share of coparcener would revert to the survivor coparcener and not to his or her legal heirs. The other contention was that one of the coparcener Suryakant Satghare during his life time left behind Will, whereunder he has bequeathed his share, interest and right in the family property in favour of the male members of the branch of Purshottam Satghare to the branch of Malharrao, namely, Defendant No.1, Defendant No.2 and Plaintiff herein in equal proportion. The said Will has not been disputed at all. In fact, probate has also been granted in relation to the said Will. As a result, the share, which ought to have devolved on the Suryakant devolved in favour of Defendant No.1, Defendant No.2 and Plaintiff in equal proportion. It was also contended that the temple cannot be partitioned by metes and bounds and cannot be sold. According to the Defendant No.11, he was presently

appointed as agent of the Court Receiver with effect from 24th January, 2001 and so long as final decree is not passed, he should be allowed to manage the temple as agent of the Court Receiver. It was also argued that One of the coparcener Lahukumar, his share was already attached on account of order passed by the Collector. In the circumstances, heirs and legal representatives of Lahukumar Defendant Nos. 10 to 16 will not get any share in the property. These were the broad submissions canvassed during the argument.

8. Accordingly, I shall proceed to consider the matter on the basis of issues framed and also address the submissions made on behalf of the parties.

Issue No.1:

9. In so far as Issue No.1 is concerned, as to whether the suit property is ancestral property of the Plaintiff and Defendants, there is no dispute in this regard at all. In fact, both the parties appeared to be ad-idem on this issue. Indeed, the plea raised on behalf of the Defendant No.6 to 9 in the Written Statement was that the suit property belonged to Malharshett. Even during the evidence,

the Plaintiff's witness has been cross-examined on that basis. In the context of this plea, it was further asserted on behalf of the Defendant Nos. 6 to 9 that the said Malharshett had already executed the Will in 1856 and it was duly probated. However, neither the original Will nor the probate proceedings in relation to the said Will of 1856 have been proved by Defendant Nos. 6 to 9. On the other hand, the Plaintiff has disputed the existence of the said Will. Suffice it to observe that, it is not necessary to elaborate on this matter further, as in the first place the Will and the probate proceeding have not been proved in evidence. Moreover, the Defendant No.8 himself had filed the Suit for partition of the selfsame property on the assertion that the suit properties were joint family properties. In other words, the fact that the suit properties are ancestral properties of the Plaintiff and Defendants is common ground. As a result I have no hesitation in answering this issue in the affirmative.

Issue No.2:

10. In so far as issue No.2 as to whether the Plaintiff has share in the suit property and the

extent of share of Plaintiff and Defendants therein is concerned, there is no much difficulty in answering even this issue. This is so because, the genealogy from the family tree produced by the Plaintiff is not in dispute. Once it is held that the suit property is the ancestral property of the Plaintiff and the Defendants, it necessarily follows that the concerned parties will have share therein as per their inheritance. In the context of this issue, one of the argument advanced on behalf of the Defendant Nos. 11 to 13 was that the parties were governed by Mitakshara law as per the said law, the property would devolve by survivorship and not by inheritance. It was argued that the share of the deceased coparcener would revert to the surviving coparcener and not to their heirs. Counsel for the said defendant Nos. 11 to 13 however, later on, in all fairness accepted that in view of the provisions of section 16 r/w section 30 of the Hindu Succession Act, such contention cannot be pursued. In the circumstances, it is not necessary for me to dwell on this matter further.

11. In the context of issue under consideration, it was also argued that the Defendant Nos. 14 to 16 are the married daughters, who were incidentally

married prior to 1994. For that reason, married daughters will not succeed to the suit property. The fact that the said Defendant Nos.14 to 16 were married prior to 22nd June, 1994 is not in dispute. In fact, that has come in evidence as well. In that sense, the argument of Defendant Nos.11 to 13 that the Defendant Nos. 14 to 16 will have no share in the suit property, will have to be accepted.

12. From the evidence on record, it is also seen that the Defendant Nos. 3 to 5 were also married prior to 1994. The reason which applies to Defendant Nos. 14 to 16 would apply on all fours to the Defendant Nos. 3 to 5. In other words, neither the Defendant No.3 to 5 or Defendant Nos. 14 to 16 will be entitled to any share in the suit property after partition.

13. Thus understood, it is only the Plaintiff and Defendant Nos. 1,2,6 to 13 would get share in the ancestral property after partition. The ratio in which they would be entitled to the share in the suit property is also not a matter of serious debate.

14. As mentioned earlier, since there is no dispute about the correctness of the family tree, it

is seen that Malharrao Satghare, Chintaman Satghare, Suryakant Satghare and Lahukumar Satghare, each of them had equal share in the ancestral property i.e. 25% each. The parties to this Suit are claiming through their predecessor, who had 25% share in the suit property.

15. In so far as Suryakant Satghare is concerned, it is seen that he has executed a Will bequeathing his share in the suit property to the male members of Malharrao Satghare. It is also not in dispute that the said Will has been probated. So long as the Will and the Probate Order operates, it will necessarily follow that 25% of the share of Suryakant Satghare in the ancestral property, will devolve on Purshottam Satghare, Dhananjay Satghare and Samir Satghare i.e., Defendant Nos. 1 and 2 and Plaintiff respectively in equal proportion.

16. In other words, besides, the share devolved on the Defendant No.1, Defendant No.2 and Plaintiff being the legal heirs of Malharrao Satghare in relation to his 25% share in the suit property, they would also get additional share in the same proportion on account of Will left behind by Suryakant Satghare who had other 25% share in the

ancestral property. That means the Defendant No.1, Defendant No.2 and Plaintiff, each of them will get equal share in the 50% of the ancestral property. If 50% is to be divided in three parts they should get around 16.66% each. However, the Plaintiff through his counsel states that he has no objection if the remainder of 0.02% out of the 50% is divided in two portion to be shared by the Defendant Nos. 1 and 3 respectively. In other words, in so far as the branch of Malharrao is concerned, only the Defendant No.1, Defendant No.2 and Plaintiff would get share in the suit property in the ratio of 16.67%, 16.67% and 16.66% respectively. The Defendant Nos. 3 to 5 being married daughter prior to 22nd June, 1994 will not be entitled to any share therein.

17. In so far as the branch of Chintaman Satghare is concerned, who had 25% share in the suit property, the same will devolve upon the Defendant No.6 to 9 in equal proportion. It may be noted that the Defendant No.9 is the daughter of Chintaman Satghare. However, admittedly, she is unmarried. In the circumstances, she would be entitled to the share in the ancestral property equally alongwith the Defendant No.6 to 8 who are her brothers. In other words, the Defendant Nos. 6 to 9 will get equal share out of 25% share

held by Chintaman Satghare. This means that each of the Defendant Nos. 6 to 9 will get 6.25% share in the ancestral property.

18. In so far as branch of Suryakant Satghare is concerned, I have already adverted to the fact that during his life time he has bequeathed his share and interest in the ancestral property in favour of the Defendant Nos. 1, Defendant No.2 and Plaintiff herein. The said Will has been probated. I have already dealt with this aspect in the earlier part of this Judgment.

19. That takes me to the branch of Lahukumar Satghare. The Defendant Nos. 11 to 16 are the heirs and legal representatives of Lahukumar Satghare. Lahukumar Satghare had 25% share in the ancestral property, which ought to devolve on his legal heirs. However, it is common ground that the Defendant Nos. 14 to 16 are the married daughters and married prior to 22nd June, 1994. Accordingly, they will not be entitled for any share in the ancestral property. That means only Defendant Nos. 11 to 13 would succeed to the share held by Lahukumar Satghare in equal proportion. Accordingly, the Defendant Nos. 11 to 13 ought to get 8.333% each. On distribution

or allocation of 8.33 % each, there will be balance of 0.01% left undistributed. It will be open to the Defendant Nos. 11 to 13 to consider who should get the said 0.01% share. If no agreement is reached between them, it will be open to the Commissioner to provide for necessary just arrangement in relation to the said 0.01% share.

Issue No.3:

20. That takes me to the third issue as to whether the Plaintiff is entitled for partition of the suit property by metes and bounds and if such partition is not possible, which properties of Joint Hindu Family be sold so that the sale proceeds can be distributed amongst the parties in the ratio already spelt out herein before. I am not considering this aspect in the present Judgment. Presently, I am inclined to pass only preliminary decree and leave the issue under consideration open to be proceeded before the Commissioner. In the event, the Commissioner takes the view that any of the ancestral property cannot be partitioned by metes and bounds, may consider the possibility of sale thereof so that the sale proceeds can be apportioned between the parties in the proportion of their determined share.

If the properties can be sold and are required to be sold, the Commissioner shall provide the option to the parties to buy out share of the other. Whosoever offers better offer would be entitled to purchase the share of the other. Once again, all these issues will have to be considered by the Commissioner and the same are left open.

Issue Nos.4 and 5:

21. I shall now deal with the Issue Nos. 4 and 5 together. In the first place, the question is whether the Plaintiff is entitled for reimbursement of any amount towards expenses incurred by him in respect of Joint Family property from April, 1974 onwards till today. As the Plaintiff has claimed reimbursement of expenses incurred by him since April, 1974 onwards, the date on which he was appointed as agent of the Court Receiver to manage the suit properties, the Plaintiff will have to establish his claim before the Court Receiver for reimbursement of all the expenses incurred by him. It is for the Court Receiver to accept the claim of the Plaintiff or to reject the same, depending on the material produced by the parties. I am not expressing any opinion about the correctness of the

claim of the Plaintiff to get reimbursement of any amount. Besides the Plaintiff, the Defendant No.8 aswell as Defendant No.11 were appointed as agents of the Court Receiver for short duration. The Plaintiff was agent of the Court Receiver in relation to the suit property from 3rd April, 1974 to 7th April, 1984, whereas the Defendant No.8 was agent of the Court Receiver from 7th April, 1984 to 6th April, 1994 and since then the temple was however, locked on account of default committed by the Defendant No.8 in payment of royalty amount. The defendant No.11 came to be appointed as agent of the Court Receiver on and from 24th January, 2001. In other words, besides the Plaintiff, even the Defendant No.8 and Defendant No.11, if have any claim in respect of any expenditure incurred by them for the maintenance and up keep of the suit property in respect of which they were appointed as agent of the Court Receiver, it will be open to them to submit their claim before the Court Receiver who in turn may accept such claim as may be established by the respective parties and pass appropriate orders in that regard. On such determination, the Plaintiff, Defendant Nos. 1,2 and 6 to 13 will be liable to contribute and share the amount towards expenses in the proportion of their respective shares.

22. The next question is whether the Defendant Nos. 3 to 5 and 14 to 16 are liable to contribute the expenses incurred in respect of the management of the Joint Family property. In view of the finding recorded in the earlier part of this Judgment that the said Defendants have no share in the suit property, it necessarily follows that they will not be liable to contribute any amount towards expenses incurred in respect of the management of the Joint family property.

23. In other words, it is only Defendant Nos. 6 to 13 and the Defendant Nos. 1,2 and Plaintiff would be jointly and severally liable towards expenses in relation to the management of the joint family property in the same proportion of their share in the suit property which has been determined in the earlier part of this Judgment. The Court Receiver shall pass necessary directions regarding the contribution to be made by the Plaintiff and Defendant Nos.1,2 and Defendant Nos. 6 to 13 respectively, corresponding to the ratio of their share in the suit property.

24. Accordingly, I proceed to pass preliminary

decree in exercise of powers under section 54 r/w Order 20 Rule 18(2) of C.P.C. and to appoint commissioner to effect partition in terms of Order 26 Rule 13 and 14 of C.P.C in the following terms:

(i) It is declared that the suit properties referred to in Exh.A to the Plaint belong to the Joint and Undivided Hindu Family of the Plaintiff and Defendant Nos. 1 to 16 and are ordered to be partitioned.

(ii) It is further declared that the Plaintiff and Defendant Nos. 1,2 and 6 to 13 alone have inherited the ancestral property and will have share in the following manner.

Plaintiff - 16.66%
Defendant Nos.1 and 2 -16.67% each.
Defendant Nos.6 to 9 -6.25% each.
Defendant Nos.11 to 13 - 8.33% each.

(iii) It is further declared that the Plaintiff, Defendant Nos.1, 2 and 6 to 13 will be liable to contribute in the ratio of their share towards expenses in relation to the management of the Joint Hindu Family

property, as may be determined by the Court Receiver.

(iv) It is further ordered and directed that the Commissioner is appointed to examine the feasibility of partitioning the suit property by metes and bounds. The Prothonotary and Senior Master to appoint proper person as Commissioner who will ascertain whether the suit property is amenable to partition by metes and bounds. In the event, the Commissioner is of the opinion that the suit property cannot be partitioned by metes and bounds, may consider sale of the said property. In that event, the parties will be at liberty to buy out the shares of the other member. The party who offers higher price will be entitled to buy out the share of the other member. If and when occasion arises, that process will have to be completed by the Commissioner. It is further ordered that the Commissioner shall complete the formalities as early as practicable as suit property is quite old and moreso, the parties to this suit are senior citizens. The Commissioner shall submit his

report at the earliest preferably before 18th January, 2008, on the basis of which final decree may be passed. The Suit be listed on 24th January, 2008 for considering passing of final decree.

(v) It is ordered that it will be open to the Court Receiver to invite Plaintiff, Defendant No.8 and Defendant No.11 to submit their claims in respect of the expenses incurred by them towards management of the suit property as agent of the Court Receiver during the relevant periods. The Court Receiver shall submit his report regarding the amount payable to the Plaintiff, Defendant No.8 and Defendant No.11 as the case may be, towards reimbursement of expenses incurred by them during the relevant period for management of the suit property as agent of the Court Receiver. That report be submitted on the next date of hearing.

(vi) In the event, the Commissioner is of the opinion that the temple of Lord Rama is capable of partition and/or sale may submit his report in that behalf. On the basis of

recommendation made therein further appropriate orders may be passed as final decree.

Ordered accordingly.

(A.M.KHANWILKAR,J)